

(Blythe, California)

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

HIGH & MIGHTY FARMS,)	
)	
Respondent,)	CASE NO. 78-CE-13-E
)	
and)	
)	4 ALRB No. 51
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Charging Party.)	
)	

DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

On April 27, 1978, the Board received a stipulation entered into by all parties to this matter, including General Counsel, Respondent (High & Mighty Farms), and Charging Party (United Farm Workers of America, AFL-CIO, hereinafter UFW), requesting that the Board transfer this matter to itself for findings of fact, conclusions of law, and order pursuant to 8 Cal. Admin. Code 20260. All parties have stipulated: that the charge, complaint, answer, and "Stipulation of Facts" with documents attached thereto constitute the entire record in this case; that no party desires to present testimony; and that all parties waive their right to a hearing pursuant to Labor Code Section 1160.2 in this matter.

////////////////////
////////////////////

On April 28, 1978, the Executive Secretary issued an order transferring the matter to the Board for decision. Thereafter, all parties submitted timely briefs.

The Board has considered the entire record herein, including the stipulation and briefs of the parties, and on the basis thereof hereby issues the following findings of fact, conclusions of law and remedial order:

FINDINGS OF FACT

1. Respondent, High & Mighty Farms, is, and at all times material herein has been, engaged in agriculture in Riverside County and is and has been at all times material herein an agricultural employer within the meaning of Labor Code Section 1140.4(c).

2. Charging Party, UFW, is now, and at all times material herein has been, a labor organization within the meaning of Labor Code Section 1140.4(f).

3. On November 17, 1975, a petition for certification pursuant to Labor Code Section 1156.3Ca) was filed by the UFW in Case No. 75-RC-10-I. On November 24, 1975, the Board conducted an election among Respondent's employees pursuant to this petition. Respondent filed timely objections to the election pursuant to Labor Code Section 1156.3(c). On March 2, 1977, the Executive Secretary issued his order dismissing two of these objections, pursuant to 8 Cal. Admin. Code 20365(e), and setting the remaining three objections for hearing. Respondent did not seek review, as provided in 3 Cal. Admin. Code 20393(a), of the order dismissing the two objections

A hearing was conducted pursuant to 8 Cal. Admin. Cede 20370 in Blythe, California, on April 14, 1977, and on June 24, 1977, the Investigative Hearing Examiner (IHS) issued his decision recommending dismissal of Respondent's remaining objections and certification of the UFW. Respondent filed timely exceptions to the IHE's decision.

4. On November 29, 1977, the Board issued its decision in High & Mighty Farms, 3 ALRB No. 88 (1977), adopting the IHS's recommendations and certifying the UFW as the exclusive representative of all Respondent's agricultural employees, excluding its employees who work exclusively outside the State of California and off-the-farm packing shed employees and vacuum-plant employees, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. On or about December 13, 1977, the UFW requested that Respondent negotiate with it. Since on or about January 17, 1978, Respondent has refused to negotiate with the UFW. As its affirmative defense in its answer to the complaint filed in this matter, Respondent asserts that the certification of the UFW is invalid as a violation of the provisions of the Agricultural Labor Relations Act, and that Respondent has therefore not committed an unfair labor practice by its refusal to bargain with the UFW.

Conclusions of Law

This Board has adopted the NLRB' s broad proscription against relitigation of representation issues in related unfair labor practice proceedings. Perry Farms, 4 ALR3 No. 25 (1978). In our decision in High & Mighty Farms, 3 ALRB No. 88 (1977), we have already considered and ruled on the issues raised by Respondent's objections to the election in Case No. 75-RC-10-I. Respondent here presents no newly-discovered or previously-unavailable evidence, nor does it argue any extraordinary circumstance(s) which might justify relitigation of such issues. Accordingly, we conclude that Respondent had a duty to bargain with the UFW based upon that union's certification on November 29, 1977, and that Respondent has failed and refused to meet and bargain collectively in good faith with the UFW, in violation of Labor Code Sections 1153 (e) and (a), at all times since January 17, 1978.

The Remedy

In accordance with our Decision in Perry Farms, supra, we shall order that Respondent, rather than its employees, bear the costs of the delay which has resulted from its failure and refusal to bargain with the union, by making its employees whole for any losses of pay and other economic benefits which they may have suffered as a result thereof, for the period from January 17, 1978, to such time as Respondent commences to bargain in good faith and continues so to bargain to the point of a contract or a bona fide impasse. The Regional Director will determine the amount of the award based in

general upon the principles and criteria set forth in Perry Farms, supra, and Adam Dairy, 4 ALRB No. 24 (1978) .

Because the certification in this case issued considerably later than the certifications in Adam and Perry, the exact data used to compute the basic make-whole wage in those cases may not provide a satisfactory basis for such a computation in this case. See Adam Dairy, supra, at page 19. We shall therefore direct the Regional Director to investigate and determine a basic make-whole wage to use in calculating back-pay and other benefits due in this matter. The investigation should include a survey of more-recently-negotiated UFW contracts. In evaluating the relevance of particular contracts to the determination of a make-whole award in this case, the Regional Director shall consider such factors as the time frame within which the contracts were concluded as well as any pattern of distribution of wage rates based on factors such as were noted in Adam Dairy, supra (size of work-force, type of industry, or geographical locations). We note, however, that the Bureau of Labor Statistics data which we used in that case to calculate the value of fringe benefits are unchanged so that the investigation herein need only be concerned with establishing an appropriate wage rate or rates for straight-time work. See Adam Dairy, supra, at pp. 24-28.

The order in this case will include a requirement that Respondent notify its employees that it will bargain with their certified collective bargaining representative. In

addition to the standard means of disseminating this notice usually required in our orders, we hold that it is appropriate, where Respondent has refused to bargain in good faith, that the notice be distributed to those employees who participated in the election in which the UFW was selected as their bargaining agent by secret-ballot voting on November 24, 1975. Accordingly, we shall order distribution of the Notice to Employees to all employees who were on Respondent's payroll during the payroll period immediately preceding the filing of the petition for certification herein on November 17, 1975.

ORDER

Pursuant to Labor Code Section 1160.3, Respondent, High & Mighty Farms, its officers, agents, successors and assigns is hereby ordered to:

1. Cease and desist from:

(a) Refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2(a), with the United Farmworkers of America, AFL-CIO (UFW), as the certified exclusive collective bargaining representative of its agricultural employees.

(b) In any other manner interfering with, restraining or coercing agricultural employees in the exercise of the rights guaranteed to them by Labor Code Section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective

bargaining representative of its agricultural employees, and if understanding is reached, embody such understanding in a signed agreement.

(b) Make its agricultural employees whole for all losses of pay and other economic benefits sustained by them as the result of Respondent's refusal to bargain.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due its employees under the terms of this Order.

(d) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice for 90 consecutive days at places to be determined by the Regional Director.

(f) Provide a copy of the Notice to each employee hired by the Respondent during the 12-month period following the issuance of this Decision.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order, to all employees employed during the payroll period immediately preceding November 17, 1975, and to all employees employed by Respondent from and including January 17, 1977, until compliance with this Order.

//////////

(h) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times, and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly-wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees be, and it hereby is, extended for a period

////////////////////
////////////////////

of one year from the date on which Respondent commences to bargain in good faith with said union.

Dated: July 21, 1973

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

MEMBER McCARTHY, Dissenting:

For the reasons set forth in my concurring opinion in Perry Farms, Inc., 4 ALRB No. 25 (1978) and my dissenting opinion in Superior Farming Company, Inc., 4 ALRB No. 44 (1978), I oppose application of make-whole relief where, as here, the Board has failed to examine the particular circumstances to determine the appropriateness of the remedy.

Dated: July 21, 1978

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to meet and bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

- (1) To organize themselves;
- (2) To form, join or help any union;
- (3) To bargain as a group and to choose anyone they want to speak for them;
- (4) To act together with other workers to try to get a contract or to help or protect each other; and,
- (5) To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain with the UFW about a contract because it is the representative chosen by our employees.

WE WILL reimburse each of the employees employed by us after January 17, 1978, for any loss of pay or other economic benefits sustained by them because we have refused to bargain with the UFW.

DATED:

HIGH & MIGHTY FARMS

By: _____
Representative Title

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

High & Mighty Farms
(UFW)

4 ALRB No. 51
Case No: 78-CE-13-E

BACKGROUND

On March 20, 1978, the General Counsel issued a complaint charging Respondent with refusing to bargain in good faith with the UFW as certified representative of its employees. Respondent timely filed an answer. There being no factual controversy, the case was transferred to the Board pursuant to 8 Cal. Admin. Code 20260 for decision upon the formal pleadings, a "stipulation of Facts" joined by all parties on April 27, 1978, and briefs.

BOARD DECISION

The Board found that the UFW was certified as representative of Respondent's employees in its decision in High & Mighty Farms, 3 ALRB No. 83 (1977). The Board rejected Respondent's request that it reconsider its decision to certify, citing Perry Farms, 4 ALRB No. 25 (1978), and concluded that Respondent had violated Labor Code Sections 1153(e) and (a) by refusing to bargain with the UFW since on or about January 17, 1978.

DISSENT

Member McCarthy dissented to the granting of make-whole relief, citing his separate opinions in Perry Farms, Inc., 4 ALRB No. 25 (1978), and Superior Farming Company" Inc., 4 ALRB No. 44 (1978).

REMEDY

Respondent is ordered to meet and bargain in good faith with the UFW, to embody any agreement reached in a signed contract, to make its employees whole for all losses of pay and other economic benefits resulting from its refusal to bargain and to post, mail and read a Notice to its employees. Also, the UFW's certification is extended for one year from the date Respondent commences to bargain in good faith with the UFW.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *